



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

SENATE BILL NO. 7

MONDAY, FEBRUARY 8, 2010

The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED
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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adles

AN ACT relating to the Kentucky Life and Health Insurance Guaranty Fund.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

- 1 ➔ Section 1. KRS 304.42-030 is amended to read as follows:
- 2 (1) This subtitle shall provide coverage for the policies and contracts specified in
- 3 subsection (2) of this section:
- 4 (a) To persons who, regardless of where they reside (except for nonresident
- 5 certificate holders under group policies or contracts), are the beneficiaries,
- 6 assignees, or payees of the persons covered under paragraph (b) of this
- 7 subsection.
- 8 (b) To persons who are the owners of or certificate holders under such policies or
- 9 contracts, other than structured settlement annuities, who:
 - 10 1. Are residents; or
 - 11 2. Are not residents, but only under the following conditions:
 - 12 a. The insurer which issued the policies or contracts is domiciled in
 - 13 this state;
 - 14 b. The states in which the persons reside have associations similar to
 - 15 the association created by this subtitle; and
 - 16 c. The persons are not eligible for coverage by an association in any
 - 17 other state due to the fact that the insurer was not licensed in the
 - 18 state at the time specified in the state's guaranty association law.
- 19 (c) For structured settlement annuities covered in subsection (2) of this section,
- 20 paragraphs (a) and (b) of this subsection shall not apply and this subtitle shall,
- 21 except as provided in paragraphs (d) and (e) of this subsection, provide
- 22 coverage to a person who is a payee under a structured settlement annuity, or
- 23 beneficiary of a payee if the payee is deceased, if the payee is a resident,
- 24 regardless of where the contract owner resides. If the payee is not a resident,
- 25 this subtitle shall provide coverage but only under both of the following

1 conditions:

2 1. a. The contract owner of the structured settlement annuity is a
3 resident; or

4 b. The contract owner of the structured settlement annuity is not a
5 resident, but the insurer that issued the structured settlement
6 annuity is domiciled in this state and the state in which the contract
7 owner resides has an association similar to the association created
8 by this subtitle; and

9 2. Neither the payee, the beneficiary, nor the contract owner is eligible for
10 coverage by the association of the state in which the payee or contract
11 owner resides.

12 (d) This subtitle shall not provide coverage to a person who is a payee or
13 beneficiary of a contract owner resident of this state, if the payee or
14 beneficiary is afforded any coverage by the association of another state.

15 (e) This subtitle is intended to provide coverage to a person who is a resident of
16 this state and, in special circumstances, to a nonresident. In order to avoid
17 duplicate coverage, if a person who would otherwise receive coverage in this
18 subtitle is provided coverage under the laws of any other state, the person
19 shall not be provided coverage under this subtitle. In determining the
20 application of the provisions of this paragraph in situations where a person
21 could be covered by the association of more than one (1) state, whether as an
22 owner, payee, beneficiary, or assignee, this subtitle shall be construed in
23 conjunction with other state laws to result in coverage by only one (1)
24 association.

25 (2) (a) This subtitle shall provide coverage to the persons specified in subsection (1)
26 of this section for direct, nongroup life, health, or annuity policies or contracts
27 and supplemental contracts to any of these and for certificates issued under

1 direct group policies and contracts.

2 (b) This subtitle shall not provide coverage for:

- 3 1. Any portion of a policy or contract not guaranteed by the insurer, or
4 under which the risk is borne by the policy or contract owner;
5 2. Any policy or contract of reinsurance, unless assumption certificates
6 have been issued pursuant to the reinsurance policy or contract;
7 3. Any portion of a policy or contract to the extent that the rate of interest
8 on which it is based:

9 a. Averaged over the period of four (4) years prior to the date on
10 which the association becomes obligated with respect to such
11 policy or contract, exceeds a rate of interest determined by
12 subtracting two (2) percentage points from Moody's corporate
13 bond yield average averaged for that same four (4) year period or
14 for such lesser period if the policy or contract was issued less than
15 four (4) years before the association became obligated; and

16 b. On and after the date on which the association becomes obligated
17 with respect to the policy or contract, exceeds the rate of interest
18 determined by subtracting three (3) percentage points from
19 Moody's corporate bond yield average as most recently available;

- 20 4. Any portion of a policy or contract issued to a plan or program of an
21 employer, association, or other person to provide life, health, or annuity
22 benefits to its employees, members, or others to the extent that such plan
23 or program is self-funded or uninsured including, but not limited to,
24 benefits payable by an employer, association, or other person under:

25 a. A multiple employer welfare arrangement as defined in 29 U.S.C.
26 sec. 1144;

27 b. A minimum premium group insurance plan;

- 1 c. A stop-loss group insurance plan; or
- 2 d. An administrative services only contract;
- 3 5. Any portion of a policy or contract to the extent that it provides for:
- 4 a. Dividends or experience rating credits;
- 5 b. Payment of any fees or allowances to any person, including the
- 6 policy or contract owner, in connection with the service to or
- 7 administration of such policy or contract; or
- 8 c. Voting rights;
- 9 6. Any policy or contract issued in this state by a member insurer at a time
- 10 when it did not have a certificate of authority to issue such policy or
- 11 contract in this state;
- 12 7. Any unallocated annuity contract;
- 13 8. A portion of a policy or contract to the extent that the assessments
- 14 required by KRS 304.42-090 with respect to the policy or contract are
- 15 preempted by federal or state law;
- 16 9. An obligation that does not arise under the express written terms of the
- 17 policy or contract issued by the insurer to the contract owner or policy
- 18 owner, including without limitation:
- 19 a. Claims based on marketing materials;
- 20 b. Claims based on side letters, riders, or other documents that were
- 21 issued by the insurer without meeting applicable policy form filing
- 22 or approval requirements;
- 23 c. Misrepresentations of or regarding policy benefits;
- 24 d. Extracontractual claims; or
- 25 e. A claim for penalties or consequential or incidental damages;~~[-and]~~
- 26 10. A contractual agreement that establishes the member insurer's
- 27 obligations to provide a book value accounting guaranty for defined

contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee which in each case is not an affiliate of the member insurer; and

11. A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Medicare Part C or Part D, 42 U.S.C. secs. 1395w-21 to w-152, or any regulations issued pursuant thereto.

(3) (a) The benefits that the association may become obligated to cover shall in no event exceed the lesser of {:

~~1.~~ }the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer, ~~{:~~ } or {

~~2.~~ }with respect to any one (1) life, regardless of the number of policies or contracts:

1. In life insurance, three hundred thousand dollars (\$300,000) in ~~{(a) life insurance}~~ death benefits, but not more than one hundred thousand dollars (\$100,000) net cash surrender and net cash withdrawal values for life insurance;

2. ~~{b. One hundred thousand dollars (\$100,000) }~~ In health insurance benefits;

a. One hundred thousand dollars (\$100,000) for coverages not defined as disability insurance or basic hospital, medical and surgical insurance, major medical insurance or long term care insurance, including any net cash surrender and net cash withdrawal values;

b. Three hundred thousand dollars (\$300,000) for disability insurance and three hundred thousand (\$300,000) for long term care insurance; and

1 c. Five hundred thousand dollars (\$500,000) for basic hospital
 2 medical and surgical insurance or major medical insurance.

3 3. In annuity benefits, two hundred fifty thousand dollars
 4 (\$250,000)[(c.)One hundred thousand dollars (\$100,000)] in the present
 5 value of annuity benefits, including net cash surrender and net cash
 6 withdrawal values; except with respect to each payee of a structured
 7 settlement annuity or beneficiary or beneficiaries of the payee if
 8 deceased, two hundred fifty thousand dollars (\$250,000)[one hundred
 9 thousand dollars (\$100,000)] in present value annuity benefits, in the
 10 aggregate, including net cash surrender and net cash withdrawal values.

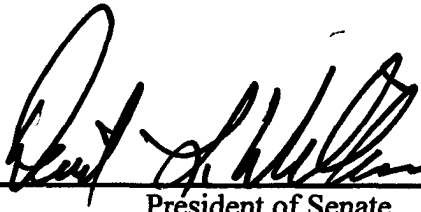
11 (b) In no event shall the association be obligated to cover more than:

- 12 1. An aggregate of three hundred thousand dollars (\$300,000) in benefits
 13 with respect to any one (1) life under subparagraphs 2. and 3. of
 14 paragraph (a) of this subsection except with respect to benefits for basic
 15 hospital, medical and surgical insurance and major medical insurance
 16 as stated in paragraph (a) of this subsection, in which case the
 17 aggregate liability of the association shall not exceed five hundred
 18 thousand dollars (\$500,000) with respect to any one individual; or
- 19 2. With respect to one (1) owner of multiple nongroup policies of life
 20 insurance, whether the policy owner is an individual, firm, corporation,
 21 or other person, and whether the persons insured are officers, managers,
 22 employees, or other persons, more than five million dollars
 23 (\$5,000,000)[one million dollars (\$1,000,000)] in benefits, regardless of
 24 the number of policies and contracts held by the owner.

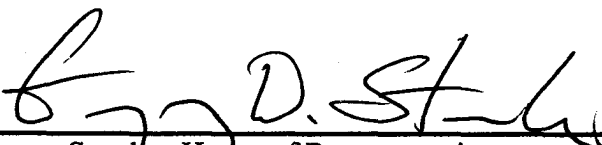
25 (c) The limitations set forth in this subsection are limitations on the benefits for
 26 which the association is obligated before taking into account either its
 27 subrogation and assignment rights or the extent to which those benefits could

1 be provided out of the assets of the impaired or insolvent insurer attributable
2 to covered policies. The costs of the association's obligations under this
3 subtitle may be met by the use of assets attributable to covered policies or
4 reimbursed to the association in accordance with its subrogation and
5 assignment rights.

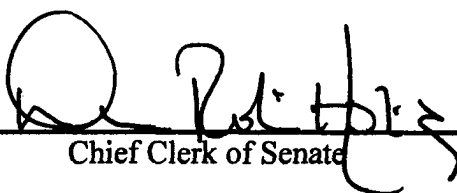
6 (4) In performing its obligations to provide coverage under KRS 304.42-080, the
7 association shall not be required to guarantee, assume, reinsure or perform, or cause
8 to be performed, assumed, reinsured or performed, the contractual obligations of the
9 insolvent or impaired insurer under a covered policy or contract that do not
10 materially affect the economic values or economic benefits of the covered policy or
11 contract.



President of Senate



Speaker-House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date March 30, 2010